

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 17 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

CC Docket No. 96-98

REPLY OF AMERITECH

Ameritech¹ submits this reply to comments responding to the Commission's
Further Notice of Proposed Rulemaking in this proceeding.²

In the FNPRM, the Commission specifically asks:

whether requesting carriers may use unbundled dedicated or shared
transport facilities in conjunction with unbundled switching, to originate or
terminate interstate toll traffic to customers to whom the requesting carrier
does not provide local exchange service.³

In its comments, Ameritech showed that the answer to that question is no.

Ameritech pointed out that a proper reading of §251(c)(3) of the Act, which deals
specifically with unbundled network elements ("UNEs"), evidences no

¹ Ameritech means: Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc.

² *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, Third Order on Reconsideration and Further Notice of Proposed Rulemaking, (August 18, 1997) ("FNPRM").

³ *Id.* at ¶61. The Eighth Circuit's October 14, 1997, Order on Petitions for Rehearing, however, is a clear indication that shared transport would not be an unbundled network element required to be provided for any purpose.

congressional intent that interexchange carriers (“IXCs”) must be permitted to use UNEs solely as a substitute for an incumbent local exchange carrier’s (“ILEC’s”) exchange access service. Further, Ameritech showed that a contrary, “plain meaning” interpretation of that section would be flatly inconsistent with other provisions of the Act concerning the maintenance of the existing access charge regime (§251(g)), the Commission’s continued jurisdiction over such charges (§251(i)), and universal service (§254) and inconsistent with recent decisions of the United States Court of Appeals for the Eighth Circuit concerning the interconnection provisions of the Act. *CompTel v. FCC*, 117 F.3d 1068 (8th Cir. 1997); *Iowa Utilities Board v. FCC*, 120 F.3d. 753 (8th Cir. 1997).

In addition, Ameritech showed that public policy concerns militated against requiring that UNEs be available for use solely as a substitute for ILEC exchange access. Such “UNE exchange access” would do nothing to facilitate or speed the development of local competition, which is the primary focus of §§251 and 252. Moreover, “UNE exchange access” would completely supplant access services as they are known today and nullify the Commission’s reasoned, phased-in, market-based approach to access reform. It could thereby preempt the normal development of efficient facilities-based access competition. In addition, the resulting significant revenue shortfall would be highly disruptive of ILEC operations and could have negative effects on universal service and the Commission’s plans for universal service reform. As Ameritech pointed out, these

are the very reasons that, in the context of access reform, the Commission refused to require that access rates be set at forward-looking cost levels.

A close reading of all the comments submitted in response to the FNPRM confirms the conclusion that the availability of "UNE exchange access" is neither compelled by the Act nor would be beneficial from a public policy perspective at this time.

With respect to whether §251(c)(3) compels the availability of "UNE exchange access," several parties have looked at the statute as a whole and the Eighth Circuit's decisions and concluded, as Ameritech did, that it does not.⁴

As expected, however, several other parties proposed an alleged "plain meaning" interpretation of §251(c)(3), under which ILECs should be compelled to provide UNEs to IXC's to be used solely as a substitute for exchange access.⁵ None of these parties, however, even attempts to address the fact that such a narrow reading of that provision would violently conflict with, and even nullify, other equally important sections of the Act.

Could Congress really have intended the virtually immediate demise of the existing access regime -- the inevitable result of an alleged "plain meaning" interpretation of §251(c)(3)? The answer is -- obviously not. First, that

⁴ See Bell Atlantic at 2-4, 7-8; NECA at 3-6; USTA at 4-11; GTE at 8-12; see also Time Warner at 3-6 and Southwestern Bell at 7-8.

⁵ AT&T at 2-3, KMC at 4-5, LBC at 1, MCI at 3-4, WorldCom at 5-6.

interpretation simply cannot be squared with §251(g), which specifies that the pre-Act access regime (including access charges) should remain in place until the Commission specifically decides otherwise in a separate proceeding. The Commission would have no control over the course of exchange access services if §251(c)(3) mandated the availability of “UNE exchange access.” Second, §251(i) preserves intact the Commission’s interstate authority over interstate exchange access services under §201. In fact, given *Iowa Utilities Board*, a “plain meaning” interpretation of §251(c)(3) would effectively strip the Commission of any jurisdiction over services that would be used as the functional equivalent of interstate access services. Third, §254 requires that the Commission deal specifically with the issue of universal service. As part of its plan to do just that, the Commission adopted a phased-in approach to access reform, acknowledging that access charges would continue to have a significant impact on universal service as access reform is phased-in.⁶ “UNE exchange access” would, of course, destroy that approach, and thereby potentially imperil universal service. The commenting parties favoring “UNE exchange access” do not address these significant concerns regarding the integrity of the Act.

Moreover, several other parties, have cautioned that permitting “UNE exchange access” would be equally unwise from a policy perspective. GTE and

⁶ *In the Matter of Access Charge Reform*, CC Docket No. 96-262, First Report and Order, FCC 97-158 (released May 16, 1997) (“Access Reform Order”) at ¶9.

USTA raise universal service concerns.⁷ Sprint echoes those concerns if “UNE exchange access” is available prior to the completion of access and universal service reform.⁸ BellSouth points to a potential \$ 300 million revenue loss for transport alone.⁹ Those commenters that favor “UNE exchange access” also do not address these important policy issues.

Nor do the proponents of “UNE exchange access” even try to explain how it would promote the local exchange competition which is the focus of §§251 and 252. That is because it would do nothing in that regard. In fact, in this regard it is that instructive that certain parties that are or represent competitive local exchange service providers argue that the Commission should not permit unbundled local switching or shared transport UNEs to be used at all unless the requesting carrier also provides local service to the end user.¹⁰

While AT&T claims that “UNE exchange access” would further the Commission’s market-based access reform program,¹¹ in fact, just the opposite is true. In its Access Reform Order, the Commission specifically found that the market should be given an opportunity to provide competitive pressures to LEC

⁷ GTE at 4-7, USTA at 3.

⁸ Sprint at 5-6.

⁹ BellSouth at 11.

¹⁰ See ALTS at 6-9, Time Warner at 8-14.

¹¹ AT&T at 5-7; see also MCI at 4.

access services. This approach gives competition a chance to develop and naturally drive rates toward costs. Because of uncertainty regarding the continued existence of implicit subsidies in access charges, and for other reasons as well, the Commission specifically refused to prescribe access rates to forward-looking cost levels.¹² “UNE exchange access” would, instead, do just that. As IXC’s quickly shifted to lower priced “UNE exchange access,” interstate access services, as such, would disappear, contrary to the Commission’s reasoned intentions.

In summary, a careful analysis shows that “UNE exchange access” is neither compelled by the Act nor advisable from a public policy perspective at this

¹² Access Reform Order at ¶263.

time. The Commission should, therefore, conclude that UNEs are not available for use by IXC's to originate or terminate interstate toll traffic to customers to whom they do not also provide local exchange service.

Respectfully submitted,



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Dated: October 17, 1997

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CERTIFICATE OF SERVICE

I, Todd H. Bond, do hereby certify that a copy of the foregoing Reply of Ameritech has been served on the parties listed on the attached service list, via first class mail, postage prepaid, on this 17th day of October, 1997.

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